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JUDGES AS SPECIALISTS AND COURTS AS QUASI-COMMISSIONS.

There has come down to us from English days the theory of specializing in the practice of law. In congested centers of population lawyers naturally divided themselves into groups as the business and jurisdiction of courts concerned themselves distinctively in aspects of jurisprudence.

That great novel by Dr. Samuel Warren, "Ten Thousand a Year," well portrays the need a serjeant or a king's or queen's counsel—the leader in an array of lawyers in a case—had of assistants for its effective presentation to a court. There is the firm of Quirk, Gammon and Snap, the attorneys, the barristers and the proctors, each proficient along his line, with the great leader to be informed and prompted as the cause unfolded in the examination of witnesses and the introduction of documentary evidence.

This novel told with realistic force of the progress and ending of a civil trial, but under the system in England it is easy to imagine, that a *cause celebre* in criminal annals in its prosecution and defense might call for the aid of lawyers from many subordinate courts, with whose practices and precedents they had familiarized themselves. We think some of our fictional literature will bear us out in this, but at the moment we cannot recall any particular story.

But, at all events, the practice in England shows, that the administration of justice made requisition upon study and accumulated experience along particular lines, to keep application of great underlying principles within practically tested confines. It was, therefore, not from study alone, but also from experience following thereafter, that our common law evolved the expert. There might be some debate as to whether its practice pursued the expert theory far enough, but that this common sense idea had its influence is not to be disputed.

As was the practice in England, so, measurably, it has been ours. The acceptance of the judgment of special tribunals when operating strictly within the lines of conferred powers, has been, not grudging, but welcome. Our courts have said this theory had its recognition in our common law.

United States Supreme Court speaks of public service commissions as tribunals "appointed by law, and informed by experience," and gives to their findings the status of *prima facie* truth. Collier on Public Service Companies, § 177. These commissions, as do many other bodies elected to care for particular concerns in the growing complexity of modern civilization, bespeak, or at least, suggest, the need for further specializing in our courts.

Our probate administration, though an ancient head in jurisprudence, is but a special court Its judgments are esteemed as being *in rem* and binding on the world in a way that judgments of courts of general jurisdiction do not require notice, actual or constructive, in order to bind. So it is in guardianship and *non compus mentis* cases. It would be strange indeed, if it might be thought that this sort of tribunal were not deemed expert and that its ministers were not informed by special study and experience.

Our common law history has not taught us to look upon courts wholly as insensate tribunals. They have powers, but they are guided as to the exercise thereof with an intelligent discretion. There is recognition of the human equation in their acts. It is implied that this element ought to be informed, so as to be expert. Therefore, generally, it is prescribed that no one may speak for a court who is not an expert in the law.

But of what use is knowledge or experience to make one an expert, unless it is along the line of things whereof a court is to render its judgments?

In volume 1, number 5 of Journal of the American Judicature Society, we note that in many of the large cities of this country municipal courts have been provided for so as to make use of the knowledge and experience of which we have been speaking. More precisely it is to make efficient, through particular qualifications, as in study or experience of judges, the administration of the law.

We approve, upon the whole, such an idea, but at this time we like not the word "efficiency." It has taken on a sinister sense. It bars or tends to bar out, the human equation of which we speak above. It smacks of that old thing, that often in our experience we know to have put up the bars against justice. We have called it technicality.

All trades acquire words peculiar thereto and in some of them these words have become shibboleths to perpetuate wrong. When a mind becomes so enamored of the processes it follows, that it will go forward even to destruction, it is a technical mind. It will murder *recundum artem*, without a qualm and repent of doing justice in unused ways.

Therefore we are not by any means at the end of the row in seeking for justice, when we have found professional efficiency. Many of our commissions have improved things, just as in departments of a great business, fitness of managers in each has helped to an unexceptionable result. But government is not like a great commercial or manufacturing business. The human equation may not be so very necessary in the latter as in the former, nor strictly, the moral equation either.

It has been said "honesty is the best policy," but honesty that is policy only is not true honesty. Like Rip Van Winkle's sworn abstinence from liquor, it may be apt to slip.

NOTES OF IMPORTANT DECISIONS.

APPEAL AND ERROR — ARGUMENT APPEALING TO CHRISTIANITY IN A CRIMINAL CASE.—In State v. Shoemake, 78 So. 240, decided by Supreme Court of Louisiana, the rule of error not appearing to be harmful was applied, in the affirming of a verdict of murder.

This case was first reversed, but on rehearing, this conclusion was changed, both opinions being agreed to by the entire bench.

In the original opinion the fact of opening the court with prayer is alluded to as being unusual, the Court saying "there may be no harm in this, although we have never heard of such a thing being done before." Then the court speaks of testimony showing decedent had joined the church and thereafter continued to attend church meetings and the district attorney winds up a fervid appeal to the jury by saying that they are called upon to say "whether there is anything in Christian experience and Christianity and whether Christianity in this parish is dead." The court declared that the trial ought to have concluded "in the clear, unmisted light of the law and the evidence." But the bill of exceptions fails to show that any of the things complained of were objected to. The court first thought the safer course was to grant a new trial.

In the opinion on rehearing the court shows that it was informed by the trial judge that it had always been his custom to open court with prayer, but the prayer was general in its terms. It was thought this was no more objectionable than the crier on opening court to say: "God save the state and this honorable court."

Of the remarks of the district attorney, it was said they were merely "general in terms," and as to these and the objectionable statements about decedent's church membership and attendance, it was said no objection was made by accused.

It was said also that: "The judge states in his per curiam to the bill of exceptions that defendant was charged with the murder of a female child some 16 years of age. Yet the verdict found him guilty without capital punishment." The Supreme Court, therefore, concludes that, if the remarks of the district at-

torney had any effect, that effect was favorable to defendant.

The rule ought to be more or less rigidly enforced which requires timely objection to be made to errors in the course of a trial. But there is such a thing as atmosphere in a case, which neither can be clearly defined or availably objected to. If the judge is sympathetically inclined toward the atmosphere, the more persistently an accused objects, the heavier the fog of prejudice settles down upon the proceedings in a trial. Courts take judicial cognizance of things sometimes less evident than those in this case, and we make bold to say that no prejudice works less intelligently than religious frenzy or hysteria. Of all unreasoning states of mind that is the chief, when its introduction is where it has no right to be.

MUNICIPAL CORPORATIONS — ORDINANCE REQUIRING INSPECTION OF LIQUOR SHIPMENTS IN INTERSTATE COMMERCE.—In West Jersey & S. R. R. Co. v. Millville, 103 Atl. 245, decided by New Jersey Supreme Court of Errors and Appeals, it was held that the Webb-Kenyon Liquor Act did not contemplate ordinances of a municipality regarding shipments of liquor where the ordinances are merely regulatory for license, and not prohibitive, purposes, and therefore an interstate carrier was within its rights in disregarding the ordinance in so far as it made it unlawful for such a carrier to deliver liquor to any club, lodge, etc., or to fail to keep open for inspection for police officers of a city consignments of such liquor.

The court said: "The act of Congress of 1913, commonly known as the Webb-Kenyon Act, prohibited the shipment or transportation of intoxicating liquor of any kind in interstate commerce, when intended to be received, possessed, sold or used in violation of the law of the State." Then are cited cases sustaining this statute.

The court also should have cited a still later case, that of Seaboard A. L. R. Co. v. North Carolina, 38 Sup. Ct. 96, where the same sort of statutory regulation that the ordinance attempts to provide for, was sustained by U. S. Supreme Court, under the Webb-Kenyon Act.

The court then goes on to inquire whether the ordinance is a law of the State, saying it is not claimed that any general law of the State is violated. Furthermore, distinction is drawn between regulation and prohibition, saying the former does not include the latter.

After some reasoning along these lines the court says: "The ordinance undertakes to extend the prohibition to sales completed outside of Millville and to prevent men from shipping into Millville property to which they have acquired a valid title elsewhere. In short, the attempt is to extend the power of Millville over property throughout the State or even the world. The legislative authority for such action must be clear. Here there is nothing in the charter to show that the Legislature meant to confer so extensive a power."

More pertinent it seems to us would it be to inquire whether Congress intended to vest in local governmental bodies of a State such as power, though, if State authority did not also so intend, Congress would acquiesce in a State's view of its laws. The States accept so much of the Webb-Kenyon Act as they care.

We see nothing in the claim, that the ordinance intends to affect title acquired elsewhere. The ordinance is for use of a thing and police power may affect that use in a city. If an ordinance is in regard to distribution of an article it may be valid, if police power is reasonably exercised and this though it be brought to the city by a carrier in interstate commerce.

ATTORNEY AND CLIENT—WRONG ETHICAL VIEW AS REASON FOR REFUSAL TO ADMIT TO PRACTICE.—Re Bowers, 200 S. W. 821, decided by Tennessee Supreme Court, confirms a recommendation of the State Board of Law Examiners, that an applicant for a license to practice law be rejected, because, though the applicant was of good moral character and was graded upon his examination sufficiently high to entitle him to a license, yet he had such a wrong conception of professional ethics, that license should be denied to him.

The particular offending of ethical conduct by the applicant was, that theretofore he had solicited business for members of the bar, and upon being remonstrated with for so doing "he devised a form of power of attorney by the terms of which the prospective litigant em-

ployed Bowers as attorney in fact and agreed to pay 50 per cent of whatever amount should be realized from the proposed litigation to Bowers as compensation for his services."

It is to be noted, that all of this was by applicant as an individual and not as a practicing lawyer, but the report shows that the applicant did not "know anything about the ethics of the legal profession," and thought it was "a wide open business like selling cigars, and if he could get work to do, it was up to him to do it." It may be, therefore, that by this he meant to continue to use the same methods he pursued as an attorney in fact after he should become an attorney at law.

The court said: "The board reports that the evidence shows that Mr. Bowers is a man of good general reputation, but it is of the opinion, after an examination of the testimony, that he has failed to conceive the nature of the duties of an attorney, and has no proper conception of the ethics of the profession; and for these reasons the board is of the opinion and so certifies to this court that he should not be admitted to practice law." The court concurs with the board, and denies admission to the applicant. If it were right to deny admission for any such reason, it might also be right to expel for a like reason. We do not believe many would hold that this could be done.

While we believe that such contracts as applicant was securing should be deemed unconscionable, and, therefore, unethical, yet it seems to us they are not *prima facie* void. They might be made voidable under a rule of court and, even it might be required of attorneys that they should not reserve to themselves any compensation in such large proportion. While courts have said they are not concluded by such contracts, though apparently fairly entered into, from saying what an attorney is entitled to receive for his services in a particular case, they yet have not condemned them as vicious.

We agree that a court may say, under a rule of court previously adopted, what practices may be stamped as so unethical as to undermine reputation, and distinguish the latter as being for professional or general purposes, but until such a rule is made, the maximum *expressio unius, exclusio alterius* should apply. One's right to follow a calling should not be denied by a rule that may be arbitrary or comes into effect after he has proven his lawful right to a privilege. *Ex post facto* law is as vicious from a civil, as a criminal, standpoint.

CRIMINAL LIBEL—LIBELING A CLASS.*

Indictment for criminal libel and criminal slander is a procedure which furnishes the prosecuting officers in every county in the Union with an effective weapon, which should be vigorously used, for the entire suppression of and elimination from our midst of the many vicious elements which are threatening the government and civilization itself; such as anarchists, "reds," Bolsheviki, rabid and government-destroying socialists, the infamous Industrial Workers of the World, and other class of agitators and calumniators of that ilk. Criminal libel—*libellus famosus infamatoria scriptura*—is a scandal, or abuse, or villification, or vituperation written or printed, or expressed by signs, symbols,[1] and the like,[2] and may be directed:

1. Against God and the Christian religion;
2. Against morality;
3. Against the constitution and laws of government;
4. Against the president or governors;
5. Against the legislatures or congress;
6. Against public officers;
7. Against the magistrates or judges, and the administration of justice;
8. Against private individuals; or
9. Against the officers of foreign governments or foreigners of distinction.

They are classified (1) as blasphemous, against God and the Christian religion; (2) plain libel, against an individual or a class; and (3) seditious libels, including all the other classes of libels above designated.[3]

Criminal Slander is to be distinguished from criminal libel in that (1) it is not so heinous an offense inasmuch as the

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(1) Lamb. Sax. Law 64; Bract. lib. 3, ch. 36; 3 Co. Inst. 174; Case de Libellis Famosis (Scandalous Libels), 5 Co. 125, 77 Eng. Repr. 250; R. v. Bear, 1 Ld. Raym. 416, 91 Eng. Repr. 1175, and 2 Salk. 417, 91 Eng. Repr. 363 (libellus famosus).

(2) 1 Kerr's Criminal Procedure, §§ 917-920.

(3) Id. § 904.

words, being spoken merely, are not of so enduring a character and do not reach so large an audience as when written or printed, and (2), in the case of the slander of an individual, however scurrilous, it is not the subject of indictment, unless it tends directly to a breach of the peace.[4] Criminal slanders are divisible into the same classes as criminal libels are divided above, and where falling under the "seditious" class, are equally indictable with seditious libels; and thus prosecuted will reach and punish, and effectually silence the scurrilous and vituperative "soap-box" orator nuisance—individuals blatently inveighing against laws, governments, officials and the like, to the common nuisance of all civilized communities as well as the jeopardy of individual rights, private property, and government itself.

Freedom of Speech and Liberty of the Press, those grand privileges and ideals of the American government, secured alike by federal and state constitutions, are privileges and rights in nowise infringed or affected by the prompt indictment and vigorous prosecution for seditious criminal libel and seditious criminal slander herein recommended. Freedom of speech and liberty of the press do not mean an unbridled license to say and write or publish whatever evil-minded persons may feel inclined, any more than the equally constitutional right of free assembly authorizes and legalizes unlawful assemblies, riots, routs, and the like. Liberty does not mean unrestrained license. There is a legal obligation on the part of all those who speak and write and publish to do so in such a manner as not to offend against public decency, public morals, public laws, and not to scurrilously and vituperatively attack public officers, the administration of justice, the laws of the land, or the government; and a failure in these particulars, and offending against any one or all of these things, renders a person subject to indictment and prosecution. And all such offenders, in the due and orderly administration of justice and the criminal laws of the land, should be promptly indicted, vigorously prosecuted, and adequately punished, notwithstanding, and in protection of, legitimate free speech and liberty of the press. The treatment of this question does not fall within the scope of the present article, and it is sufficient to say in this place that the foregoing principles and assertions are amply borne out by the adjudicated cases in this country and England.[5]

(4) Russ. on Crimes (9th ed.) 343. See: R. v. Langley, 6 Mod. 125, 87 Eng. Repr. 882; R. v. Bear, 2 Salk. 417, 91 Eng. Repr. 363, and 1175; Thornley v. Lord Kerry, 4 Taunt. 355, 13 Rev. Rep. 626, 128 Eng. Repr. 367; Villers v. Monsley, 2 Wils. 403, 95 Eng. Repr. 886.

(5) See, among other cases, that of the "Haymarket" anarchists of Chicago.—Spies v. People, 122 Ill. 1, 3 Am. St. Rep. 320, 6 Am. Cr. Rep. 570, 12 N. E. 865, 17 N. E. 898; petition for writ of error dismissed, 123 U. S. 143, 31 L. Ed. 80, 8 Sup. Ct. Rep. 21. Also the cases of Herr Most, the notorious German anarchist.—People v. Most, 128 N. Y. 108, 26 Am. St. Rep. 457, 8 N. Y. Cr. Rep. 273, 27 N. E. 970, affirming 7 N. Y. Cr. Rep. 376, 8 N. Y. Supp. 625; People v. Most, 171 N. Y. 423, 58 L. R. A. 509, 16 N. Y. Cr. Rep. 555, 64 N. E. 175, affirming 71 App. Div. 160, 16 N. Y. Cr. Rep. 392, 75 N. Y. Supp. 591, which affirmed 36 Misc. 139, 16 N. Y. Cr. Rep. 105, 73 N. Y. Supp. 220; R. v. Most, L. R. 7 Q. B. Div. 244. See, also, in this connection, Coleman v McLennan, 78 Kan. 711, 130 Am. St. Rep. 390, 20 L. R. A. (N. S.) 369, 98 Pac. 281; People v. Wallace, 85 App. Div. (N. Y.) 170, 17 N. Y. Cr. Rep. 432, 83 N. Y. Supp. 130; United States ex rel. Turner v. Williams, 154 U. S. 279, 48 L. Ed. 979, 24 Sup. Ct. Rep. 719. Constitutional provision guaranteeing liberty of the press does not justify printing libels.—See: State v. Sykes, 28 Conn. 225; State v. McKee, 73 Conn. 18, 49 L. R. A. 542, 46 Atl. 409; Storhm v. People, 160 Ill. 582, 43 N. E. 622; State v. Blair, 92 Iowa 28, 60 N. W. 486; In re Banks, 56 Kan. 242, 42 Pac. 693; Coleman v. MacLennan, 78 Kan. 711, 130 Am. St. Rep. 390, 20 L. R. A. (N. S.) 369, 98 Pac. 281; Levert v. Daily States Pub. Co., 123 La. 594, 131 Am. St. Rep. 356, 23 L. R. A. (N. S.) 726, 49 So. 206; Com. v. Holmes, 17 Mass. 336; State v. Pioneer Press Co., 100 Minn. 177, 117 Am. St. Rep. 684, 10 Ann. Cas. 351, 9 L. R. A. (N. S.) 482, 110 N. W. 867 (restricting publication of news as to executions); State v. Van Wye, 136 Mo. 227, 58 Am. St. Rep. 627, 37 S. W. 938; Hart v. People, 26 Hun 396; Ex parte Jackson, 96 U. S. 727, 24 L. Ed. 877; In re Rapier, 143 U. S. 110, 36 L. Ed. 93, 12 Sup. Ct. Rep. 374; Arnold v. Clifford, 2 Sumn. 238, Fed. Cas. No. 555; United States v. Harmon, 45 Fed. 414; Harmon v. United States, 50 Fed. 921; Hallam v. Post Pub. Co., 55 Fed. 456. English rule is the same.—See R. v. Brodlaugh, L. R. 2 Q. B. Div. 569, 21 Moak (Eng. Repr.) 269; reversed on another point, L. R. 3 Q. B. Div. 607; 28 Moak Eng. Rep. 482, 3 Am. Cr. Rep. 464; R. v. Hicklin, L. R. 3 Q. B.

Requisites of Indictments. In general, in criminal libel or criminal slander, as in every other criminal offense, sufficient must be alleged against the accused to make out a prima facie case, and the allegations must be sufficiently detailed and specific for this purpose, or they will be insufficient.[6] The indictment or information must comply with the general rule in criminal pleading, requiring it to be certain and specific, and sufficient to set forth, in a plain and brief manner, every fact necessary to constitute the offense sought to be charged against the accused.[7] It is not necessary to allege in an indictment or information facts which the law will necessarily infer upon the proof of other facts which are alleged.[8] Inasmuch as the statutory definition of criminal libel, or of criminal slander, governs, it is immaterial whether the words alleged to be libelous, or slanderous, are so *per se* or not,[9] it being sufficient to charge that the libel is "as follows," and then set it forth verbatim, with sufficient innuendoes, and this alleges the libel or slander with sufficient certainty.[10]

Libel of a Class. A criminal action for the libel, or for the slander, of a class differs in a very material regard from a civil action for the same libel or slander. The rule in civil cases is that one of a class can not maintain a civil action against a charge of either libel or slander where the libel or slander charged against the class is so general as to designate all persons who may belong to the designated class collectively, by a single name, irrespective of geographical limitations, political divisions, place of abode, or any other similar restrictions,[11] and there is nothing in the language employed which, by proper innuendo or colloquium, can be made to apply to any particular class.[12] Thus, it has been said that

Div. 360; In re Besant, L. R. 11 Ch. Div. 508. "Constitutional liberty of speech and of the press, as we understand it, simply guarantees the right to freely utter and publish whatever the citizen may desire, and to be protected in so doing, provided always that such publications are not blasphemous, obscene, and scandalous in their character, so that they become an offense against the public, and by their malice and falsehood injuriously affect the character, reputation, or pecuniary interests of individuals. The constitutional protection shields no one from responsibility for abuse of this right. To hold that it did would be a cruel libel upon the bill of rights itself. The laws punishing criminal libel have never been deemed an infringement of this constitutional guarantee."—State v. Van Wye, 136 Mo. 227, 58 Am. St. Rep. 627, 37 S. W. 938. "It may as well be said here as elsewhere that it is a radical misconception of the scope of the constitutional protection to indulge the belief that a person may print and publish ad libitum, any matter, whatever the substance or language, without accountability to law. Liberty in all its forms and assertions in this country is regulated by law. It is not an unbridled license. Where vituperation or licentiousness begins, liberty of the press ends."—United States v. Harmon, 45 Fed. 414. Prohibiting addresses in public parks and other public places is not an infringement of the freedom of speech.—Fitts v. Atlanta (City of), 121 Ga. 567, 104 Am. St. Rep. 167, 67 L. R. A. 803, 49 S. E. 793. Com. v. Abrahams, 156 Mass. 57, 49 Am. Rep. 5, 30 N. E. 79; Com. v. Davis, 162 Mass. 510, 44 Am. St. Rep. 389, 26 L. R. A. 712, 39 N. E. 113; Love v. Phelan, Judge of Recorder's Court, 128 Mich. 550, 55 L. R. A. 621, 87 N. W. 785; In re Cox, 129 Mich. 636, 89 N. W. 440; In re Anderson, 69 Neb. 690, 5 Ann. Cas. 421, 96 N. W. 149; Ex parte Warfield, 40 Tex. Cr. Rep. 413, 76 Am. St. Rep. 724, 50 S. W. 933.

(6) State v. Lomack, 130 Iowa 79, 106 N. W. 386; State v. O'Hagan, 73 N. J. L. 209, 63 Atl. 95; Melton v. State, 22 Tenn. (3 Humph.) 389; R. v. Gregory, 8 Ad. & E. N. S. (8 Q. B.) 508, 55 Eng. C. L. 507; R. v. Dean of St. Asaph, 21 How. St. Tr. 847, 1044; R. v. Rossewell, 2 Show. 411, 89 Eng. Repr. 1012. Charging imputing want of chastity to a woman, an indictment or information which alleges accused declared that a man named was "monkeying" with the woman and "doing what he pleased with her, meaning thereby that he was having carnal knowledge of her," is good.—Dickson v. State, 34 Tex. Cr. Rep. 1, 53 Am. St. Rep. 694, 28 S. W. 815, 30 S. W. 807.

(7) Reid v. State, 53 Ala. 402, 25 Am. Rep. 627; Brooke v. State, 154 Ala. 53, 45 So. 622; Tracy v. Com., 87 Ky. 578, 9 S. W. 822; Richardson v. State, 66 Md. 205, 7 Atl. 43; People v. Jones, 67 Mich. 544, 35 N. W. 419; State v. Buck, 43 Mo. App. 443; People v. McLaughlin, 33 Misc. 691, 15 N. Y. Cr. Rep. 302, 68 N. Y. Supp. 1108; Lawton v. Territory, 9 Okla. 456, 60 Pac. 93; Com. v. Chambers, 15 Phila. 415; State v. Henderson, 1 Rich. L. 179.

(8) R. v. Munslow, 18 Cox. C. C. 112, 10 Am. Cr. Rep. 480.

(9) People v. Seeley, 139 Cal. 118, 72 Pac. 834; State v. Elder, 19 N. M. 393, 143 Pac. 482.

(10) People v. Seely, 139 Cal. 118, 72 Pac. 834; Clay v. People, 86 Ill. 147, 2 Am. Cr. Rep. 381.

(11) See note, 23 L. R. A. (N. S.) 726.

(12) Comes v. Cruce, 85 Ark. 79, 14 Ann. Cas. 327, 107 S. W. 185; Hardy v. Williamson, 86 Ga. 551, 22 Am. St. Rep. 479, 12 S. E. 874; Merrill v. Post Pub. Co., 197 Mass. 185, 83 N. E. 419; Lewis v. Soule, 3 Mich. 514; McGraw v. Detroit

if a man were to write or publish that "all lawyers are thieves," without something in addition pointing out some particular lawyer, no lawyer could maintain a civil action thereon.[13] The rule is different where the language restricts the designation of a class so as to point out a particular locality.[14]

In Criminal Libel, or criminal slander, the rule is that a criminal proceeding may be instituted at the instance of any individual of the class defamed,[15] for, as Mr. Chief Justice Cullen remarks, in People v. Eastman,[16] the foundation of the theory upon which libel is made a crime is that by provoking passions of persons libeled, it excites them to violence and a breach of the peace, and for that reason a criminal prosecution can be maintained where no civil action would lie.[17] While this language is purely obiter,[18] it but restates the well-established principle of criminal libel. The same observation is to be made regarding the identical remarks of Mr. Justice Smith, in Palmer v. City of Concord,[19] in which case the libel before the court was a charge of cowardice and ill treatment of noncombatants on the part of the whole Union Army, and the judge, after saying the libel might be prosecuted criminally adds: "It is obvious that a libelous attack on a body of men, though no individuals are pointed out, may tend as much, or more, to create public disturbances as an attack on one individual; and a doubt has been suggested whether the fact of numbers defamed does not add to the enormity of the act." And the same is true of the case of Sumner v. Buel,[20] in which a majority of the court held that a civil action could not be maintained by an officer of a regiment for a publication reflecting on the officers of the regiment generally, but add: "The offender in such case, does not go without punishment. The law has provided a fit and proper remedy, by indictment; and the generality and extent of such libels make them more peculiarly public offenses."[21]

General Libel Upon a Body of Men, indictment lies, though no individuals are pointed out, because such writings and publications have a tendency to inflame and disorder society, and for that reason are within the cognizance of the criminal law.[22] Thus, it has been said to publicly charge the street-car conductors of a certain city with being pimps, and averring that they would sell the virtue of their sisters for a drink, is an indictable libel.[23] And a

Free Press Co., 85 Mich. 203, 48 N. W. 500; Watson v. Detroit Journal Co., 143 Mich. 430, 8 Ann. Cas. 131, 5 L. R. A. (N. S.) 480, 107 N. W. 81; Stewart v. Wilson, 23 Minn. 449; Kenworthy v. Journal Co., 117 Mo. App. 237, 93 S. W. 882; Palmer v. Concord (City of), 48 N. H. 211, 97 Am. Dec. 605; Sumner v. Buel, 12 Johns. 475; Miller v. Maxwell, 16 Wend. 9; Ryckman v. Delavan, 25 Wend. 186, reversing White v. Delavan, 17 Wend. 49; People v. Eastman, 188 N. Y. 478, 11 Ann. Cas. 302, 81 N. E. 459; Hauptner v. White, 81 App. Div. 153, 80 N. Y. Supp. 895; R. v. Alme, 3 Salk. 224, 91 Eng. Repr. 790.

(13) Eastwood v. Holmes, 1 Fost. & F. 347.

(14) See: Chandler v. Holloway, 4 Port. 17; Wofford v. Meeks, 129 Ala. 349, 87 Am. St. Rep. 66, 55 L. R. A. 214, 30 So. 625; Schomberg v. Walker, 132 Cal. 224, 64 Pac. 290; Byers v. Martin, 2 Colo. 605, 25 Am. Rep. 755; Forbres v. Johnson, 50 Ky. (11 B. Mon.) 48; Ellis v. Kimball, 33 Mass. (16 Pick.) 132; Gidney v. Blake, 11 Johns. 54; Weston v. Commercial Advertiser Assoc., 184 N. Y. 479, 77 N. E. 660; Woods v. Gleason, 18 App. Div. 401, 46 N. Y. Supp. 200; Maybee v. Fisk, 42 Barb. 326; Dwyer v. Fireman's Journal Co., 11 Daly 248; Ryer v. Fireman's Journal Co., 11 Daly 251; Cook v. Reif, 52 Sup. Ct. (20 Jones & S.) 302, 8 N. Y. Civ. Proc. Rep. 133; McClean v. New York Press Co., 19 N. Y. Supp. 262; Fenstermaker v. Tribune Pub. Co., 12 Utah 439, 35 L. R. A. 611, 43 Pac. 12, 13 Utah 532, 35 L. R. A. 611, 45 Pac. 1197; Smith v. Utley, 92 Wis. 133, 35 L. R. A. 620, 65 N. W. 744; Foxcroft v. Lacy, 1 Hobart 89, 80 Eng. Repr. 239; Shearlock v. Beardsworth, 1 Murr. (Sch.) 196.

(15) People v. Eastman, 188 N. Y. 478, 11 Ann. Cas. 302, 81 N. E. 459, affirming 116 App. Div. 922, 101 N. Y. Supp. 1137.

(16) Id.

(17) Citing State v. Brady, 44 Kan. 435, 21 Am. St. Rep. 296, 24 Pac. 948; Palmer v. Concord (City of), 48 N. H. 211, 97 Am. Dec. 605; Sumner v. Buel, 12 Johns (N. Y.) 475.

(18) The point involved did not embrace the general principle, which was in nowise before the court. The prosecuting attorney had plainly blundered by indicting the accused under a section of the New York Penal Code, which had no application to the offense charged.

(19) Palmer v. Concord (City of), 48 N. H. 211, 97 Am. Dec. 605.

(20) Sumner v. Buel, 12 Johns. (N. Y.) 475.

(21) R. v. Hector Campbell, K. B., Hil. Term. 1808, cited in Holt on Libel 249, 250.

(22) Holt on Libel 237; Le Fanu v. Malcomson, 1 H. L. C. 637, 9 Eng. Repr. 910.

(23) Jones v. State, 38 Tex. Cr. Rep. 364, 70 Am. St. Rep. 751, 43 S. W. 78.

scandal published of three of four persons is punishable at the complaint of one or more, or all of them.[24] Where the alleged publication is against a class of persons, it need not designate the names of the persons of that class.[25] A libel on one of the class, without designating him, is a libel on the whole, and may be so described in the indictment or information;[26] because where a paper is published equally reflecting upon a number of people, it reflects upon all, and readers, according to their different opinions, may so apply it.[27]

JAMES M. KERR.

Los Angeles, Cal.

(24) Holt on Libel 237; R. v. Benfield, 2 Burr. 980, 97 Eng. Repr. 664; Le Fanu v. Malcomson, 1 H. L. C. 637, 9 Eng. Repr. 910.
(25) Jones v. State, 38 Tex. Cr. 364, 70 Am. St. Rep. 751, 43 S. W. 78.
(26) R. v. Jenour, 7 Mod. 400, 87 Eng. Repr. 1318.
(27) Id.

BRITISH WAR EMERGENCY LEGISLATION — RESTRICTIONS ON RENT AND MORTGAGES.

One of the most important of British war measures is the Act passed on the 23rd of December, 1915, preventing the increase of rent or interest on mortgages in the case of small dwelling houses. It is a signal example of drastic interference with the rights of property and the freedom of contract. Frankly admitted to be an Act passed in the interests of a certain section of the community, it has had results which are not all of them to the advantage of the class which it was designed to benefit. We propose to give a brief outline of its provisions, and conclude by pointing out some of its economic results.

The first provision of the Act is that where the rent of a dwelling house to which the Act applies, or the rate of interest on a mortgage of such dwelling house, is increased during the war above what is called the standard rent, or the standard rate of interest, the excess cannot be recovered. There is no contracting out. The "standard rent" is the rent on the 3rd of August 1914, or, if the house was not let at that date, the rent at which it was last let before that date, or if the house was let after the 3rd of August, 1914, the rent at which it was first let. The "standard rate of interest" is the interest payable on a mortgage in force on the 3rd of August, 1914, or the rate payable on a mortgage made since that date. Now let us notice the exceptions (1) The Act does not apply to rent or interest which became due before November 25, 1915. (2) The landlord may charge additional rent at the rate of 6 per cent on the amount expended on the improvement of structural alteration of a house (not including decoration or repairs). (3) It is an increase of rent if any burden or liability previously borne by the landlord is shifted from the landlord to the tenant, and vice versa, any increase of rent in consequence of a transfer of burden from tenant to landlord is not an increase if on the whole the tenant benefits. Any dispute about these matters is to be settled by the County Court, and its decision is final. (4) Where the landlord pays the rates, and not the occupier, any increase of rates charged to the occupier as rent by the landlord is not an increase of rent under the Act, and rates includes water rents and charges. (5) Where a notice calling in a mortgage unless a higher rate of interest should be paid was given before August 4 1914, the higher interest paid after the Act is not an increase under the Act. The dwelling houses included in the Act are a house, or a part of a house, let separately without any separate land other than a garden. The amount of the standard rent or the rateable value must not exceed (a) Thirty-five pounds in the Metropolitan Police District, including the city of London: (b) Thirty pounds in Scotland; (c) Twenty-six pounds elsewhere. But the Act does not apply to the case where a house

is let at a rent including board, attendance or use of furniture.

In the case of a mortgage where there is other property besides the statutory dwelling house or dwelling houses included, the Act does not apply if the rateable value of such dwelling house or dwelling houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage. The Act also does not apply to any securities but legal mortgages—not to equitable charges by deposit of title deeds The mortgages must have had the property or legal estate conveyed to him by deed Two other points should be noted. First that when the Act has once become applicable to any building or mortgage it continues to apply whether or not the dwelling house continues to be a dwelling house to which the Act applies. Secondly, where the standard rent is less than two-thirds of the rateable value the Act does not apply The definition of "rateable value" is the rateable value on August 3, 1914, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed.

We turn now to the restrictions on recovering possession of property to which the Act applies, and to the restrictions on calling in mortgages. So long as the tenant pays the rent, and performs the other conditions of the tenancy, he can be deprived only for (a) committing waste; (b) committing a nuisance or annoyance to adjoining or neighboring occupiers; (c) if the premises are reasonably required by the landlord for the occupation of himself, or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court asked to make the order This class (c) has formed an important exception to the operation of the Act, but it is always a question of fact, and not of law—the question being raised and usually settled in the County Court without appeal to the High Court.

As to mortgages. So long as the standard interest is paid, and is not more than twenty-one days in arrear, and the covenants are observed, and the mortgagor keeps the property in a proper state of repair, and pays all interest and installments of principal recoverable under any previous incumbrance of the property, the mortgagee cannot call in his mortgage, or take any steps for exercising any right of foreclosure, or for otherwise enforcing his security, or for recovering the principal secured on the mortgage. But this does not apply where the principal is repayable by installments over not less than ten years from the date of the mortgage. A power of sale may be exercised moreover, if the mortgagee was in possession on November 25, 1915, and the mortgagor consents to the exercise of the powers in the mortgage. Lastly, if the mortgage is of a leasehold interest, and the mortgagee satisfies the County Court that his security, if seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable, therefore, that the mortgage should be called in and enforced, the County Court may authorize this to be done.

The statute has now been over two years in operation. In that period prices have enormously increased. Tradesmen's charges for repairs have gone up in some cases over 100 per cent, and yet the property owner cannot increase his rent in cases covered by the statutory limit. One result of this is that repairs are not being made by landlords. Then, while rents below the limit are stationary, those outwith it have gone soaring up, and tenants in that category are, as it were, making up for the low rental of the smaller tenants, and in the next place there is the curious spectacle of practically everybody but the landlord being allowed to raise charges to meet increased prices. On those who receive income from such property the effect is severe. It lowers their real income and at the same time renders the capital subject unsaleable. It has utterly prevented new ventures in build-

ing and thus caused a famine in housing accommodation for the working classes. As against these points, however, it has undoubtedly prevented a loud outcry against landlords and consequently acute discontent: in short, it has placated one section at the expense of another.

DONALD MACKAY.

Glasgow, Scotland.

MASTER AND SERVANT—ENTICEMENT.

248 Fed.

TRIANGLE FILM CORPORATION, Complainant-appellant, v. ARTCRAFT PICTURES CORPORATION, Defendant-appellee.

Second Circuit Court of Appeals.
Decided March 14, 1918.

It is not meddlesome for a third person to offer an employe better wages or other inducement to quit his employment, and does not render himself subject to an action for enticement or to an injunction by the employer.

Appeal from the District Court of the United States for the Southern District of New York.

Appeal from an order of the District Court for the Southern District of New York (Manton, J., presiding) denying the plaintiff's motion for an injunction *pendente lite*. The jurisdiction of the court depended upon diverse citizenship.

The plaintiff is a Virginia corporation engaged in manufacturing, distributing and exhibiting moving pictures, and on the 26th day of March, 1917, entered into a contract with one William S. Hart, of Los Angeles, California. By this contract the plaintiff engaged Hart as an actor to perform in motion picture productions "which are to be manufactured by the employer under the supervision of Thomas H. Ince." Hart accepted the employment "under the supervision of the said Thomas H. Ince." The contract recited that it was intended to be superseded by one in more elaborate form, and both parties acknowledged that Hart could not be replaced. It concluded as follows: "This contract is made upon the condition and with the understanding that the employe will be supervised in his acting and work hereunder by Thomas H. Ince."

On the day mentioned Ince was in the employ of the plaintiff as manufacturing producer at its studio in Culver City, California, and held an interest in its stock, but on June 12, 1917, he sold out all this interest and severed his relations with it. Hart, upon learning these facts, terminated his relations with the plaintiff, and both Hart and Ince went into the employ of the defendant. It may be assumed that the defendant offered to take Hart in and indeed that it persuaded him to accept. It may also be assumed that the defendant knew of the contract between the plaintiff and Hart. Ince, however, violated no contract between himself and the plaintiff in selling out his stock interests in it or terminating his relations, nor is there undisputed evidence that, having done so, he attempted to dissuade Hart from continuing in the plaintiff's employ.

Learned Hand, D. J.—This case depends either on Lumley v. Gye (2 El. & Bl., 216) or upon a strangely misconceived extension of that doctrine. Lumley v. Gye (supra), a wholesome and widely accepted case, we not only accept on principle, but we should in any case be bound to treat it as law upon authority (Bitterman v. L. & N. R. R., 207 U. S. 196; Angle v. Chic., etc., R. R., 151 U. S., 1), and in that aspect the case stands upon the question whether Hart violated his contract. He so clearly did not that we hardly feel justified in any discussion of the question. He had in substance stipulated that his term should not last beyond Ince's connection with the plaintiff, and no one suggests that Ince had no right to sell out his interest and leave. Assuming, then, that the defendant did induce him to leave, it did not run counter to the doctrine of Lumley v. Gye (supra).

Realizing the danger of such a conclusion, the plaintiff then stands upon another leg, which is this: The reasonable expectation of an employer that his employes will continue with him is a part of his "good will," as we say, and any one who hurts him in that "good will" does him an "injuria," even though there be no contract broken and the employe might leave at pleasure. Lord Bowen put the doctrine as well as anybody in Mogul S. S. Co. v. McGregor (L. R., 23 Q. B., 598, 613), that intentional damage to one's property or trade without "just cause" is actionable. Moreover, the Supreme Court in Truax v. Raich (239 U. S. 33) and Hitchman Coal Co. v. Mitchell (December 10, 1917, 38 Sup. Ct. 65) has said that in such cases there may be a right of action, though the person persuaded does not break a contract in leaving.

Yet it is clear that the real question turns upon what is "just cause" (Privilege, Intent

and Malice, Oliver Wendell Holmes, Jr., 8 Harv. Law R. 1), and that in effect it makes slight difference whether one asks in respect of what "cause of action" the plaintiff suffered his damage, or whether the defendant had "just cause" for inflicting the damage, though it does make a good deal of difference in the department of the law. Nobody has ever thought, so far as we can find, that in the absence of some monopolistic purpose everyone has not the right to offer better terms to another's employe, so long as the latter is free to leave. The result of the contrary would be intolerable both to such employers as could use the employe more effectively and to such employes as might receive added pay. It would put an end to any kind of competition.

That such a doctrine should be supposed to follow from Truax v. Raich (supra) or Hitchman Coal Co. v. Mitchell (supra) somewhat surprises us. In the first case the defendant had threatened to use illegal means to induce the employer to discharge the plaintiff. In the second a labor union had determined to compel a mine to operate as a closed shop, and that too by fraud. It was held that since the union was not seeking to redress wrongs of which any of the plaintiff's employes complained, but intervened only for the purpose of preventing any open shops which might compete with closed shops elsewhere, they had no "just cause" for the ensuing damage. That purpose, i. e., to compel the whole industry to operate closed shops, was held to be illegal, and the illegality depended upon the supposedly meddlesome character of the intervention. That nobody in his own business may offer better terms to an employe, himself free to leave, is so extraordinary a doctrine that we do not feel called upon to consider it at large.

The order is affirmed.

NOTE.—*Enticing Servant Away From Employment.*—This note does not cover cases of master and apprentice, which have been recognized under our common law and legislation in regard thereto undoubtedly may rest on the police power of state, and is justified under its poor laws, if in no other way. The inquiry here is whether the willful enticement of a servant, knowing he is in the employment of another, to quit his service makes the enticer liable to damages to the master?

In Angle v. Chicago St. P. M. & O. R. Co., 151 N. S. 1, 38 L. ed. 55, 14 Sup. Ct. 240, it appears that by interference on the part of others, laborers employed by plaintiff were caused to disperse and go elsewhere for work. The court said: "It has been repeatedly held that, if one maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer."

This case cites Lumley v. Gye, 2 El. & Bl. 216, where a singer had entered into a contract to sing only at the theatre of the plaintiff, and defendant maliciously induced her to break that contract. Defendant was held for damages sustained by plaintiff. Also it cites Bowen v. Hall, 6 Q. B. D. 333, 337, in which a third person was held for maliciously inducing a servant to break his contract for exclusive personal service to an employer, and defendant was held liable for the damages caused. So also the case cites Walker v. Cronin, 107 Mass. 555, where a third person willfully induced plaintiff's employes to leave their employment, and plaintiff losing their services lost also the profits expected to be derived therefrom. Plaintiff in that case had a right of action.

This principle as declared in Haskins v. Royster, 70 N. C. 601, was held in a later case by the same court to cover the malicious persuading by anyone of another to break his contract with employer. "It is not confined to contracts of service." Jones v. Stanley, 76 N. C. 355.

In Employing Printers' Club v. Dr. Blosser Co., 122 Ga. 307, 50 S. E. 88, 69 L. R. A. 97, 106 Am. St. Rep. 134, all of the cases in English reports are cited and the Angle and Walker cases, *supra*, and there it was said that: "Though this rule is not universal in the courts of last resort of our sister states, it is believed to have been followed in most of them."

An action has been held maintainable even by agents of a principal, where a third person knowingly induced the latter to break his contract. Raymond v. Yarrington, 96 Tex. 443, 72 S. W. 580, 97 A. S. R. 914. In the opinion the Lumley, Angle, Walker and Jones cases, *supra*, were all cited.

In Betterman v. L. & N. R. Co., 207 U. S. 196, 28 Sup. Ct. 91, the Angle case is referred to as sustaining the principle of maliciousness in interfering in any contract. Presumptively, the court also approves of the Lumley case, a contract of employment.

In Truax v. Raich, 239 U. S. 33, it was ruled that there is the right to earn a livelihood and that an employment is at will does not make it one at the will of others and the unjustified interference of third persons, with contract right therein, is actionable.

In Hitchman Coal & I. Co. v. Mitchell, 38 Sup. Ct. 65, Justice Whitney, speaking for a majority of the court, in the prevailing opinion, citing the Angle and Walker cases, among others, declares that: "The right of action for persuading an employe to leave his employer is universally recognized and it rests upon fundamental principles of general application." Then he considers matters set up by way of justification for the interference with employment. First he discards question of right of employes and then speaks of the right of workingmen to form unions and to enlarge their membership, saying this right is freely accorded provided the objects of the union are proper and legitimate, but even this right in such a case is not absolute, but must be in reasonable regard for conflicting rights. Where as in the instant case deefndants were notified that the mine in question was run "non-union," and contracts with employes, voluntarily made, were valuable, they had no right

to interfere. It is hard to differentiate that case in general principle from the instant case, and we make bold to say that the doctrine does exist, that if an employer has a valuable contract in the service of an employe, it may not be interfered with by another in seeking his own advantage and his interference need not be malicious so as to make his interference actionable. All that is necessary is for the third person to know of the contract of employment. The particular features that were in the Hitchman case need not exist. The mention of them was merely incidental. C.

ITEMS OF PROFESSIONAL INTEREST.

BAR ASSOCIATION MEETINGS FOR 1918—WHEN AND WHERE TO BE HELD.

American—Cleveland, Ohio, Hotels Winton and Statler; August 28, 29 and 30.

Alabama—Montgomery, July 12 and 13.

Arkansas—Little Rock, May 30 and 31.

California—San Jose, June 6, 7 and 8.

Colorado—Colorado Springs, July 12 and 13.

Georgia—Tybee Island, May 31, June 1 and 2.

Hawaii—Honolulu, May 29.

Illinois—Chicago, Hotel LaSalle, May 31 and June 1.

Indiana—Indianapolis, July 10.

Iowa—Des Moines, June 27 and 28.

Kentucky—Danville, July 2 and 3.

Maryland—Atlantic City, N. J., Hotel Chelsea, June 27, 28 and 29.

Michigan—Kalamazoo, June 28 and 29.

New Hampshire—Crawford House, White Mountains, July 6.

New Jersey—Atlantic City, June 14 and 15.

North Carolina—Wrightsville Beach, June 25, 26 and 27.

Ohio—Cleveland, August 26 and 27.

Oregon—Portland, November 19 and 20.

Pennsylvania—Bedford Springs, June 25, 26 and 27.

South Carolina—Spartanburg, about August 1.

South Dakota—Sioux Falls, June 19 and 20.

Tennessee—Chattanooga, August 7, 8 and 9.

Texas—Wichita Falls, July 3, 4 and 5.

West Virginia—Elkins, July 16 and 17.

Wisconsin—Racine, June 26, 27 and 28.

MEETING OF THE LOUISIANA BAR ASSOCIATION.

The Louisiana Bar Association convened at the Gruenewald Hotel, New Orleans, April 19, 1918. Only eighty members attended, war conditions being given as an excuse for the small attendance.

The president, George H. Terriberry, of New Orleans, urged many reforms in his address. He especially emphasized the need of spurring up the courts on the proper use of their inherent power to purge the profession of undesirable members. He said:

"The Supreme Court recently held, even though a lawyer stood convicted of a crime, it had no jurisdiction to disbar unless the act was committed in the capacity of attorney. It gave a very narrow interpretation to the article of the Constitution conferring jurisdiction over acts of professional misconduct. The almost universal rule is that courts which have the power to admit to practice have inherently the power to disbar, but our court took the view it had no jurisdiction in such matters as the provision of the Constitution was confined to acts of professional misconduct. It is unfortunate we find lawyers in the penitentiary who are members of our bar and consequently officers of our courts. A law should be passed providing an attorney should be dropped from the rolls upon being convicted of any offense involving moral turpitude."

Mr. W. O. Hart, of New Orleans, succeeded in securing the indorsement of all but two of the recommendations of the Conference of Commissioners on Uniform State Laws. The convention approved the following acts and resolutions, suggested by the conference: A uniform pure food law; domestic acknowledgement form marriage and marriage license law; uni- act; uniform flag law; establishment of a department of uniformity of legislation in the state library; appointment of special committees in each house of the Legislature on uniformity of legislation; uniform cold storage law; uniform vital statistics law; the establishment of a legislative drafting bureau; uniform health insurance law; opposing any reduction in the age limit specified in the child labor law, and a uniform divorce law. The association voted down a resolution approving the adoption by the Legislature of the uniform Torrens system of land registration. It also voted down the suggestion of adoption of a uniform state law on the extradition of persons of unsound mind.

A bitter controversy arose over a resolution instructing the Grievance Committee to report publicly its findings on charges of oppression in office brought against Hon. Fred D. King, a local district judge.

Much testimony was taken in the case and a review of the evidence together with the findings of the committee were reported to the Executive Committee. The president sustained a point of order that under the constitution of the Association the report could not be made

public and that any action to be taken must be on the recommendation of the committee. The committee made no recommendation. On appeal the president was sustained, but the local press has criticised the action of the association, contending that the absence of any will be justified in believing the charges to be true.

The officers elected for the ensuing year were as follows: President, Charles A. McCoy, Lake Charles; Vice-Presidents, Walter L. Gleason, New Orleans; George D. Hudson, Monroe; Hon. Albin Provosty, New Roads; Col. Isaac D. Wall, Baton Rouge; Secretary-Treasurer, Wynne G. Rogers, New Orleans.

BOOK REVIEW

WHITLEY ON BILLS, NOTES AND CHECKS.

Mr. James L. Whitley of the New York Bar, former assistant corporation counsel of the City of Rochester and member of Committee on Banks, in New York, presents under the above title, the completely annotated text of Negotiable Instruments Law, as adopted by forty-five states, the District of Columbia and Hawaii.

The plan followed in this work is to take the New York statutes as its sections have been numbered, and where construction appears in any other jurisdiction, the section considered is shown by a table identifying the corresponding section.

Decisions upon this law, since it started on its career to become a uniform law in the states, have been in overwhelming mass and therefore, to make it practically usable, only the very important cases are cited or referred to.

The work gives forms of paper with indorsements thereon and discusses their practical effect in negotiation and the liability of parties thereto. The rights of bona fide holders for value in bills or checks carrying or not carrying notice of irregularities are given.

This book is a very useful guide in everyday business transactions and is of ready reference and quick use. Its adaptability to this purpose is reinforced by the full and careful index to its sections and its citation of cases is from all of the states which have adopted the uniform Negotiable Instrument Law.

The book is bound in law buckram, is attractive in appearance, 400 pages in bulk, and is published by National Law Book Company, Rochester, N. Y. 1917.

HUMOR OF THE LAW.

Joy Rider (stopped by rural constable): Haven't we got any rights left in this country? Doesn't the constitution guarantee us life, liberty and the pursuit of happiness?

Constable: It don't guarantee no man the pursuit of happiness at ninety miles an hour.

A Western legislator once introduced a measure to prohibit window cleaners from stepping out on window sills above a certain height. When another prominent member of the legislature championed the odd bill, a friend asked him:

"Why the deuce did you support that measure?"

"Well," said the diplomatic member, "it wasn't that I care a cuss for the window cleaners in the state, but those fellows are apt to fall on pedestrians, and there are some good ones among us."

"Your honor," in silvery tones, said the forewoman of the jury, "we forgot to ask which gentleman is the plaintiff and which the defendant. But, after all, I do not suppose it makes any particular difference, for we find them both guilty. All the jury ladies are agreed that men who wear such atrocious whiskers are perfectly capable of anything."

An attorney having addressed the court as "gentlemen," instead of "your honors," after he had concluded, a brother of the bar reminded him of his error. He immediately rose and apologized thus:

"May it plase the coort, in the hate of debate I called yer honors gentlemen. I made a mistake, yer honors, and humbly apologize."

Col. Sam Will John, of Alabama, says:

"Legislation is not an easy task. You cannot, to save your life, on any subject, use language that will be construed by everybody the same way. I will give you an illustration that everybody will recognize—you will see how wide apart they have gone in the construction of one single statement. If you read Timothy you will see that it says, 'The bishop shall be the husband of one wife.' How has that been construed? The most of the civilized world say you shall not have two, three or more wives, and we know how the American construes it, but some construe it that he shall have at least one wife and as many more as he can take care of."

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adverse Possession**—Intent to Claim.—One in the occupancy of a tract of land with the intent to claim and hold it to the extent of the boundaries of the instrument under which he holds is in "actual possession" of all to the extent that it is not actually held by some other person.—Russell v. McIntosh, Ky., 201 S. W. 33.

2. **Assault and Battery**—Justification.—Consent to assault being no justification, contributory negligence is no defense to action for injuries to hunter, whose companion mistook him for animal and shot him.—White v. Levarn, Vt., 102. Atl. 1035.

3. **Associations**—Ratification.—Where president of unincorporated irrigation association, empowered with management, subject to directors, notified them he had employed plaintiffs as attorneys in suit against association, and no director objected, contract was ratified and binding.—Ft. Morgan Reservoir & Irrigation Co. v. Sterling Irr. Co., Colo., 171 Pac. 72.

4. **Bankruptcy**—Composition.—Permission to bankrupt to withdraw offer of composition after acceptance by majority in number and amount of creditors and application to confirm together with objections should, under Bankruptcy Act, §§ 12, 13, be denied; act authorizing no such procedure.—In re Agree, U. S. D. C., 247 Fed. 590.

5.——Conditional Sale.—Where "Holmes notes," evidencing conditional sale, were not recorded until ten days prior to bankruptcy of purchaser, they were valid as against his trustees in bankruptcy under Bankr. Act U. S. § 47a, as amended in 1910, as to rights of trustee in bankruptcy.—Delaval Separator Co. v. Jones, Me., 102 Atl. 968.

6.——Insolvency.—Creditor's mere suspicion that debtor who makes payment or gives security is insolvent does not, where transaction occurs within four months of bankruptcy, render it preferential, but it is necessary that creditor have reasonably founded belief of debtor's insolvency.—Donohue v. Dykstra, U. S. D. C., 247 Fed. 593.

7.——Jurisdiction.—Under Bankruptcy Act, § 2, as amended by Act June 25, 1910, § 2, a bankruptcy court of ancillary jurisdiction, which has taken possesion of mortgaged property, is without authority, regardless of the court of primary jurisdiction, to release such property to the mortgagee for the purpose of an independent foreclosure suit.—In re Paterson Lumber Co., U. S. D. C., 247 Fed. 578.

8.—Liens.—Bankruptcy Act, § 64a, declaring that taxes legally due shall be paid in advance of dividends to creditors, has reference to payment out of the general funds of the estate, and is not intended to disturb priority of liens fixed by substantive law.—Polk County, Iowa, v. Burns, U. S. C. C. A., 247 Fed. 399.

9.——Participation by Claimants.—Creditors whose claims were withdrawn and expunged from list of claims held not to have participated in distribution of estate, and hence they might, despite Bankruptcy Act, § 70a, subd. 5, thereafter, subject to judgments recovered on such claims proceeds of life policies payable to estate of bankrupt, surrender value of which had been paid trustee.—Andrews v. John Nix & Co., U. S. S. C., 38 S. Ct. 249.

10.——Process.—Omission in printed copy of order for publication of subpoena in involuntary petition against partnership and members thereof, who resided without district, held no ground for setting aside adjudication; omission not rendering order unintelligible.—Hunter, Walton & Co. v. J. G. Cherry Co., U. S. C. C. A., 247 Fed. 458.

11.——Withholding from Record.—Under Bankruptcy Act, § 70e, mortgage given with understanding that it would be withheld from record held subject to be set aside at suit of trustee, and four months' limitation had no application.—Cooper Grocery Co. v. Penland, U. S. C. C. A., 247 Fed. 480.

12. **Banks and Banking**—Receiving Deposits.—To warrant conviction under Rev. St. 1909, § 4585, making it an offense for owner, agent or manager of a private bank to receive a deposit knowing owner of bank to be insolvent, it is not necessary that accused should have had ultimate authority in managing the bank, if he was in fact intrusted with the duty of receiving deposits, since he was then the agent of the owner.—State v. Munroe, Mo., 201 S. W. 100.

13. **Bills and Notes**—False Representation.—Where defendant contended that note was procured by false representations as to value of corporate stock, evidence that corporate officers made false representations to others in attempt-

ing to dispose of stock was admissible.—First Nat. Bank v. Garner, Ind., 118 N. E. 813.

14.——Negotiability.—Notes conditioned that if paid at maturity 6 per cent should be deducted from amount, and that non-payment of installment for more than 30 days after maturity should make remaining installments due at holder's option, were not negotiable instruments within Comp. Laws 1909, §§ 4626, 4627.—Lambert v. Harrison, Okla., 171 Pac. 45.

15.——Notice of Dishonor.—Under Negotiable Instruments Act (Code Pub. Civ. Laws, art. 13, § 128), waiver of notice of dishonor may be implied by any conduct or words of indorser by which holder of note is reasonably induced to believe that such waiver was intended.—Linthicum v. Bagby, Md., 102 Atl. 997.

16.——Presumption.—Possession by third party of note payable to payee's order and not indorsed by him raises no presumption of ownership, and no such presumption is created by Negotiable Instrument Law, § 49.—Allen v. Hays, Tenn., 201 S. W. 135.

17. **Brokers**—Performance.—When a broker has brought the parties together, and they have entered into a valid agreement, he has performed his full duty, and is entitled to his commission, and is not responsible for non-performance of the contract by either party thereafter.—Hudson P. Rose Co. v. Goodale, Perry & Dwight, N. Y., 169 N. Y. S. 446.

18.——Single Agency.—A real estate broker, after finding a prospective purchaser of property intrusted to him for sale at a given price, cannot, without disclosing offer to principal, purchase at reduced price and sell to purchaser at an enhanced price and retain the profit.—McBride v. Campredon, N. M., 171 Pac. 140.

19. **Carriers of Goods**—Discrimination.—As the prompt movement of cars is necessary to carry on business of carriers, as well as to prevent discrimination among shippers, carrier may impose demurrage charges on privately owned tank cars used in its business.—Pittsburgh, C., C. & St. L. Ry. Co. v. Freedom Oil Works, U. S. D. C., 247 Fed. 573.

20.——Estoppel.—A connecting carrier is not estopped to rely on a provision in a bill of lading, limiting liability to loss occurring on its own lines to defeat recovery on an unlawful contract made by its agent to pay such loss on interstate shipment, since estoppel cannot be invoked to obtain for shipper an illegal preference.—Southern Ry. Co. v. Lewis & Adcock Co., Tenn., 201 S. W. 131.

21. **Carriers of Live Stock**—Delay—Where railroad company, knowing that margin of safety was small, elected to transport shipment of live stock without unloading for food, etc., and unloading of two of cars was delayed, because consignee's terminal facilities would only accommodate limited number of cars, and engine departed after placing on siding all cars it would hold, held, that company must, as to such cars delayed, be deemed to have violated Twenty-Eight Hour Law.—United States v. Philadelphia & R. Ry. Co., U. S. C. C. A., 247 Fed. 469.

22.——Twenty-Eight Hour Law.—Where railroad company, knowing delays were imminent and margin of safety small, attempted to transport shipments of cattle without unloading for feeding, water, and rest, held that, where animals were confined beyond period allowed by Twenty-Eight Hour Law, company must be deemed to have knowingly and willfully violated act.—Philadelphia & R. Ry. Co. v. United States, U. S. C. C. A., 247 Fed. 466.

22. **Carriers of Passengers**—Defective Appliances.—Where a door on a street car worked so hard that passenger, directed to push, fell to highway when door suddenly opened, the street railroad company was liable; the door being defective.—Adams v. Portland Ry., Light & Power Co., Ore., 171 Pac. 219.

24.——Defective Appliances.—Passenger, suing street railway for injuries, was entitled to judgment on evidence that, when another passenger was about to sit down on seat in front of plaintiff, such seat fell from supports and struck plaintiff's foot.—Rosenbaum v. Union Ry. Co., N. Y., 169 N. Y. S. 456.

25. **Chattel Mortgages**—Bona Fide Purchaser.—Where horse dealer sold horse and took notes and mortgage, having it recorded in town in which the purchaser falsely said he resided, record of mortgage was invalid as against bona fide purchaser in such town, and dealer could not retake horse under Rev. St. c. 96, § 1, as to recording chattel mortgages.—Martin v. Green, Me., 102 Atl. 977.

26.——Description of Property.—Under mortgage on buildings, machinery, plant, tools, equipment, and franchises of glass manufacturing company, held, that machines and hand molds used in manufacturing glass articles, whether fast or loose, passed under mortgage.—In re East Stroudsburg Glass Co., U. S. D. C., 247 Fed. 614.

27. **Commerce**—Burden on.—Tax Law Va. § 45, as amended by Acts 1915 (Ex. Sess.) c. 148, imposing license taxes on manufacturers who sell their products at place other than that of manufacture, is not invalid, as direct burden on interstate commerce in its application to nonresident manufacturers.—Armour & Co. v. Commonwealth of Virginia, U. S. S. C., 38 S. Ct. 267.

28.——Burden on.—Order of Railroad Commission requiring railroad to stop two interstate trains at a county seat having a population of 1,500, pursuant to Vernon's Sayles' Ann. Civ. St. 1914, art. 6676, subd. 2, held not to impose an unreasonable burden on interstate commerce.—Gulf, C. & S. F. Ry. Co. v. State of Texas, U. S. S. C., 38 S. Ct. 236.

29.——Excise Taxes.—St. Mass. 1909, c. 490, pt. 3, § 56, together with St. Mass. 1914, c. 724, § 1, imposing excise taxes measured according to capital stock on foreign corporations doing intrastate and interstate business in Massachusetts, is invalid as direct burden on interstate commerce.—International Paper Co. v. Commonwealth of Massachusetts, U. S. S. C., 38 S. Ct. 292.

30.——Interstate Transaction.—Where an engine had been specifically designated for a certain interstate train, and a hostler was told to fire and prepare the engine for such train, and while doing so was injured, he was engaged in interstate commerce within the federal Employers' Liability Act.—Cincinnati, N. O. & T. P. Ry. Co. v. Morgan, Tenn., 201 S. W. 128.

31.——Interstate Transaction.—Foreign holding corporation, whose local activities were confined to holding stockholders' and directors' meetings, keeping records, distributing dividends, etc., was not engaged in interstate commerce.—Cheney Bros. Co. v. Commonwealth of Massachusetts, U. S. S. C., 38 S. Ct. 295.

32.——Interstate Transaction.—Shipments over defendant's road wholly within state held not necessarily interstate commerce, depending on common control, management or arrangement for continuous shipment, notwithstanding notations in bill of lading and delivery to connecting line, which carried lumber out of the state and paid first carrier.—Service v. Sumpter Valley Ry. Co., Ore., 171 Pac. 202.

33. **Conspiracy**—Bribery.—Criminal Code, § 19, punishing conspiracies to oppress free exercise of rights secured by federal Constitution or laws, etc., is inapplicable to conspiracy to bribe voters at election for presidential electors and members of Congress.—United States v. Bathgate, U. S. S. C., 38 S. Ct. 269.

34. **Constitutional Law**—De Facto Government.—The recognition of the Carranza government by the political department of our government as the de facto and later as the de jure government of Mexico binds the judges, as well as all other officers and citizens of the government.—Ricaud v. American Metal Co., U. S. S. C., 38 S. Ct. 312.

35.——License.—Where evidence did not show, and there was nothing in Acts 35th Leg., c. 190 and chapter 207 as amended by First Called Sess. 35th Leg. c. 31, providing for licensing motor vehicles, to show that licenses were excessive, it must be presumed they were reasonable.—Atkins v. State Highway Department, Tex., 201 S. W. 226.

36.——Political Department.—The conduct of foreign relations is committed to the executive and legislative departments, and the propriety of their exercise of this political power is not subject to judicial inquiry or decision.—Oetjen v. Central Leather Co., U. S. S. C., 38 S. Ct. 309.

37.——Referendum.—City ordinance appropriating water supply and providing for assessment of compensation and issuance of bonds held not repealed by Const. Ohio 1912, which in article 18, § 5, authorizes referendum on such ordinances, where it took effect before the Constitution became operative.—Sears v. City of Akron, U. S. S. C., 38 S. Ct. 245.

38. **Contracts**—Modification.—Where there was ample consideration to sustain original contract and contract authorized it, modification by parties for purpose of facilitating work under contract is not subject to attack on ground that it was unsupported by consideration; original consideration extending to modification.—Harrison v. City of Tampa, U. S. D. C., 247 Fed. 569.

39.——Mutuality.—An agreement of a saloon keeper to run only a saloon on certain premises and use the beer of a brewer exclusively for ten years at the ruling market price is mutual and binding, although the brewer does not agree to furnish whatever goods may be required.—Ziehm v. Frank Steil Brewing Co. of Baltimore City, Md., 102 Atl. 1005.

40. **Corporations**—Assignment of Stock.—Where director at request of one acting for corporation assigned his stock certificate in blank, but no transfer was entered on corporate books, and it was not contemplated either by director or company that he had lost his status as stockholder so as to be ineligible, such director was still eligible to act in that capacity.—Lippman v. Kehoe Stenograph Co., Del., 102 Atl. 988.

41.——Foreign Corporations.—Foreign tobacco corporation which sold its business within a state pursuant to a trust dissolution decree held not to be doing business therein so as to subject it to service of process although it owned stock in local subsidiary companies and advertised and sent soliciting agents within state.—Peoples' Tobacco Co. v. American Tobacco Co., U. S. S. C., 38 S. Ct. 233.

42.——Sale of Stock.—Under Rev. St. 1908, § 870, sale of stock of another company made by corporation after expiration of its charter without delivery or assignment of certificate, which was lost, and refusal to issue new certificate because buyer did not furnish indemnifying bond and because seller was not record owner of stock, did not effect sale as against attaching creditor.—Lucifer Coal Co. v. Buster, Colo., 171 Pac. 61.

43.——Stockholder Liability.—Creditors' bill to enforce stockholders' liability on behalf of plaintiff and all others joining in the bill held not maintainable without the corporation as a party.—Clinton Mining & Mineral Co. v. Cochran, U. S. C. C. A., 247 Fed. 449.

44. **Damages**—Mental Suffering.—That one became angry because of his light service being cut off for non-payment, which service was renewed immediately upon payment and request, does not entitle him to recover for mental suffering alone, there being no personal injury, damage to property, or other loss sustained.—Texas Power & Light Co. v. Taylor, Tex., 201 S. W. 205.

45. **Deeds**—Restrictions.—Restriction in deed that but single dwelling house should be erected on lot, with covenant to insert similar restrictions in other conveyances in district referred to single house or structure, and was not violated by grantor's subsequent conveyances permitting erection of duplex dwelling or apartment house.—Rohrer v. Trafford Real Estate Co., Pa., 102 Atl. 1050.

46. **Dower**—Presumption.—Where widow and her present husband were in possession of house when judgment was rendered giving widow her dower, it must be presumed that possession was in exercise of dower right, in view of Ky. St. § 2138.—Johnson v. Boggess, Ky., 201 S. W. 42.

47. **Easements**—Right of Way.—Agreement by defendant's grantors that so long as they owned servient estate, way should remain open, which agreement was not signed by plaintiff's grantor, did not limit existence of right of way to period during which defendant's grantor's owned servient estate, and plaintiff, having acquired dominant tenement, may, way being prescriptive one, assert his easement.—Novinger v. Shoop, Mo., 201 S. W. 64.

48. **Electricity**—Discontinuing Service.—The act of a lighting company in discontinuing service without notice upon user's default for past month's service, held proper, where contract provided for discontinuance on default, and it was immaterial that the amount due was not in excess of deposit by user to secure performance.—Texas Power & Light Co. v. Taylor, Tex., 201 S. W. 205.

49. **Eminent Domain**—Taking Property.—A contractor with the United States is bound to perform the contract in accordance with the laws of the land, and without disregarding the rights or appropriating the property of others, and is vested with no power to take the property of others.—William Cramp & Sons Ship & Engine Bldg. Co. v. International Curtis Marine Turbine Co., U. S. S. C., 38 S. Ct. 271.

50.——Taking Private Property.—Gen. Code Ohio, §§ 3677-3697, authorizing municipalities to determine necessity for taking private property without giving owner a hearing, held valid.—Sears v. City of Akron, U. S. S. C., 38 S. Ct. 245.

51. **False Pretenses**—Reliance on.—If defendant made pretenses without intent that they shoiud be relied on, but subsequently sold stock with intent that buyer should be influenced by the former false pretenses, he, by adoption, renewed such pretenses.—Clark v. People, Colo., 171 Pac. 69.

52. **Forcible Entry and Detainer**—Constitutional Law.—Rem. & Bal. Code Wash. §§ 811 and 825, making possession for five days preceding unlawful entry sufficient basis for forcible entry and detainer action, etc., does not unconstitutionally conflict with U. S. Rev. St. § 2289 et seq. (Comp. St. 1916, § 4530 et seq.) relating to homestead entries.—Denee v. Ridpath, U. S. S. C., 38 S. Ct. 226.

53. **Fraudulent Conveyances**—Bill of Sale.—An unrecorded bill of sale of undelivered personalty executed by a deceased is not void as to

an order of court setting aside a monthly allowance to wife of deceased, and the wife not being a "creditor" within Rev. Laws, § 1078 (Comp. Laws, § 2703).—Guisti v. Guisti, Nev., 171 Pac. 161.

54.——Fraud.—Though, under Rev. St. Tex. 1911, art. 6824, failure to record mortgage would not affect its validity, mortgage given with understanding that it would not be recorded might be set aside as in fraud of creditors.—Cooper Grocery Co. v. Penland, U. S. C. C. A., 247 Fed. 480.

55.——Insolvency.—Insolvent debtor's transfer of property alleged to be in fraud of creditors will not be set aside merely because transferee is a creditor and indebtedness was consideration for transfer, as under Rev. Civ. Code, art. 1978, one of the elements in revocatory action is an injury to creditors.—Lowenberg, Marks & Co. v. H. & C. Newman, Limited, La., 77 So. 891.

56. **Gaming**—Gambling Device.—Slot machine which gives five cents worth of gum for each nickel dropped therein, but also gives trade checks when indicated, is "device of chance" within Rev. St. 1916, c. 130, § 18, although amount of checks to be received is indicated before each play.—State v. Googin, Me., 102 Atl. 970.

57. **Guaranty**—Corporation.—A contract by one corporation "to guarantee the principal and interest on the bonds" of another corporation held a guaranty of payment and not of collection.—Graysonia-Nashville Lumber Co. v. Goldman, U. S. C. C. A., 247 Fed. 423.

58. **Husband and Wife**—Alienation of Affections.—A mother-in-law is not guilty of alienating her infant son's affections for his wife merely because she disliked the wife and regretted the marriage and said that the son because of extreme youth was not fitted for the responsibilities of a married man.—Cooper v. Cooper, Kan., 171 Pac. 5.

59.——Antenuptial Contract.—Under Rev. Civ. Code La. art 2396, husband is not liable to his wife for interest on her property, either dotal or paraphernal, delivered into his custody under antenuptial contract, which did not make him agent for wife, until after demand for return.—Murphy v. McLoughlin, U. S. C. C. A., 247 Fed. 385.

60.——Inheritance.—Where the wife at marriage was seised of an estate of inheritance in land, the husband, at comon law, became seised of the freehold jure uxoris, and took the rents and profits during their joint lives on the theory of the unity of husband and wife.—Otto F. Stifel's Union Brewing Co. v. Saxy, Mo., 201 S. W. 67.

61. **Injunction**—Equity.—Mere publication by trade union of existence of a strike and of its causes in a thorough manner is no ground for equitable interference on suit of employer.—Truax v. Bisbee Local, No. 380, Cooks' and Waiters' Union, Ariz., 171 Pac. 121.

62.——Prejudice.—Mere possibility of future litigation resulting from dismissal of suit, in which plaintiff's motion for preliminary injunction, made on bill and affidavits, was denied, does not amount to prejudice to defendant, precluding court from dismissing suit on plaintiff's motion.—Orr v. Coca-Cola Co., U. S. C. C. A., 247 Fed. 452.

63. **Insane Persons**—Tender.—In action by committee of insane person to avoid purchase at auction of large number of bulky articles from storage company, committee was relieved from making a formal tender back by company's refusal to accept offer to return.—McCarthy v. Bowling Green Storage & Van Co., N. Y., 169 N. Y. S. 463.

64. **Insurance**—Indemnity Policy.—Under liability policy limiting liability to $5,000, and providing for defense at insurer's expense, insurer held liable for taxable costs in addition to the $5,000.—Casey-Hedges Co. v. Southwestern Surety Co., Tenn., 201 S. W. 137.

65.——Insurable Interest.—One has no insurable interest in life of his second cousin who was not indebted to him, and who furnished him with no support.—Cotton v. Mutual Aid Union, Ark., 201 S. W. 124.

66. **International Law**—De Facto Government.—Recognition of Carranza government held to validate all its actions from the commencement of its existence, and hence seizure and sale of bullion in 1913 by military commander representing that government must be treated as the act of a duly commissioned general of the legitimate government of Mexico.—Ricaud v. American Metal Co., U. S. S. C., 38 S. Ct. 312.

67.——Recognition.—Recognition of government originating in revolution as de jure government held retroactive and to validate all actions and conduct of such government from commencement of its existence.—Oetjen v. Central Leather Co., U. S. S. C., 38 S. Ct. 309.

68. **Intoxicating Liquors**—License.—In prosecution for selling whiskey in violation of prohibition amendment, evidence that defendant had been granted license by United States to retail intoxicating liquor was admissible.—Birch v. State, Ariz., 171 Pac. 135.

69. **Libel and Slander**—Posting as Libelous.—Posting of letter denouncing another as an assassin of character, a liar, and unworthy of respect and esteem of decent and fair-minded people, is libelous.—Smith v. Lyons, La., 77 So. 896.

70. **Licenses** — Monopoly. — Contract between partnership engaged in runnig auto busses, etc., in city of Jacksonville, and United States military encampment near city giving a monopoly of conveying officers and soldiers at reduced fare, etc., held not the grant of such a "franchise" by the government of the United States as would exempt it from payment of license tax imposed by state, county, or municipality.—Ex parte Marshall, Fla., 77 So. 869.

71.——Uniform Taxation.—License fees for operation of motor may be fixed according to horse-power, though Const. art. 8, §§ 1, 2, requires uniformity of taxation and forbids assessment of property for taxes elsewhere than in county where it is situated.—Atkins v. State Highway Department, Tex., 201 S. W. 226.

72. **Literary Property**—Unfair Competition.—Relative to right to injunction for unfair competition, defendant's title of play, "The House of a Thousand Scandals," held not to so resemble plaintiff's "The House of a Thousand Candles," as to be calculated to deceive.—Selig Polyscope Co. v. Mutual Film Corp., N. Y., 169 N. Y. S. 369.

73. **Mandamus**—Review.—Where, on conflicting motions for revivor in case in which one of original parties had died, court, after full hearing in regular course, granted one and denied the other, there was an exercise of jurisdiction, and the defeated applicant is not entitled to mandamus to review the same.—Ex parte Slater, U. S. S. C., 38 S. Ct. 265.

74. **Master and Servant**—Contributory Negligence.—Servant, working near open elevator shaft guarded only by channel iron 36 inches from floor, who went on his hands and knees into cylindrical iron tank to smooth its edges, and in process rolled it into shaft, was contributorily negligent.—Moose v. Galigher Machinery Co., Utah, 171 Pac. 153.

75.——Course of Employment.—Where a motion picture company plant occupied four corners of a street intersection and an employe, loitering in the street, was run over by a director's automobile, the accident was not one arising out of the employment within the Workmen's Compensation Act.—Balboa Amusement Producing Co. v. Industrial Accident Commission, Cal., 171 Pac. 108.

76.——Discharge of Employe.—Where no contract existed requiring members of defendant union in plaintiffs' service to continue work, defendant union violated no right of plaintiffs' by causing such members to quit their employment.—Truax v. Bisbee Local, No. 380, Cooks' and Waiters' Union, Ariz., 171 Pac. 121.

77.——Federal Employers' Liability Act.—Railway company is not liable under federal Employers' Liability Act to its civil engineer, who slipped when decayed spot on tie gave way and allowed his foot to fall in space between ties when ballasting was low, neither defect in tie

nor in ballasting which was not according to rule rendering track unfit for use.—Nelson v. Southern Ry. Co., U. S. S. C., 38 S. Ct. 233.

78.——Hazardous Employment.—Under Workmen's Compensation Act, § 3, subds. 3, 4, employe in coal and wood yard, which then was not classed as hazardous employment, is not, where injured splitting wood, entitled to compensation on theory that it was in connection with operation of vehicle, because wood would ultimately be hauled by him in vehicle.—Casterline v. Gillen, N. Y., 169 N. Y. S. 345.

79.—Inspection.—Boiler Inspection Act, § 2, held not to prevent liability for injury or death caused by feature of construction which is unsafe, though not disapproved by the federal boiler inspector.—Great Northern Ry. Co. v. Donaldson, U. S. S. C., 38 S. Ct. 230.

80.——Invitee.—An invitee in a store is not to be too circumscribed as to his movements while waiting for a clerk to exhibit goods, but he has a right to inspect goods and frequent places used by other patrons of the store, and provided for their use by the storekeeper.—S. H. Kress & Co. v. Markline, Miss., 77 So. 858.

81.——Partial Loss.—Under Workmen's Compensation Law, § 15, subd. 3, injury to thumb requiring amputation of distal phalanx, and removal of slight chip of bone of proximal phalanx, held not equivalent to loss of whole thumb.—Baron v. National Metal Spinning & Stamping Co., N. Y., 169 N. Y. S. 337.

82. **Monopolies**—Board of Trade.—Rule of Board of Trade prohibiting purchase of grain "to arrive" between sessions, except at closing, bid held valid under the Anti-Trust Act in view of its limited operation and its improvement of market conditions.—Board of Trade of City of Chicago v. United States, U. S. S. C., 38 S. Ct. 242.

83. **Mortgages**—Consideration.—Though mortgagor was not a party to a note secured by mortgage under seal reciting that it was given as collateral security the objection that it was without consideration was without merit, where no failure or illegality of consideration was alleged as the mortgage imported consideration.—Herron v. Stevenson, Pa., 102 Atl. 1049.

84.——Estoppel.—Irregularities in an executory process will not cause title thereunder to be annulled at suit of creditors of seized debtor where he has acquiesced in proceedings and has given possession to purchaser, particularly where no fraud is alleged and proved.—Lowenberg, Marks & Co. v. H. & C. Newman, Limited, La., 77 So. 891.

85. **Municipal Corporations**—Due Care.—Bicycle rider, entering street from private driveway, held required to watch the traffic in the street, and where, without warning from bell, she ran directly into the path of an automobile, she did not exercise due care.—Hunter v. Mountfort, Me., 102 Atl. 975.

86.——Imputable Negligence.—Where plaintiff, a nurse in a public institution, who had been furnished by her employer with car, hired with its driver to carry crippled children home, was injured by a collision, negligence of driver is not imputable to her.—Van Ingen v. Jewish Hospital of Brooklyn, N. Y., 169 N. Y. S. 412.

87.——Public Use.—Though a privately owned terminal delivery railroad served only one factory, its use of the street was a public use, where it connected with all trunk lines, and issued their bills of lading; the goods being immediately put in transit.—Stanley v. Jay St. Connecting R. R., N. Y., 169 N. Y. S. 530.

88.——Street Assessments.—Under Portland City Charter, § 400, all manner of errors and irregularities in ordinances for assessment of street improvements may be corrected whether "jurisdictional or otherwise," and a reassessment made for pavement already laid, providing freeholder has some opportunity to be heard before his property is taken.—Wilson v. City of Portland, Ore., 171 Pac. 201.

89.——Street Obstructions.—"Bulk Windows" include show windows as well as bay windows, sometimes called "bow windows," and "porticoes" and "porches" embrace marquees, within Laws 1854, c. 9, conferring on cities the power to regulate certain obstructions in the street.—City of Baltimore v. Nirdlinger, Md., 102 Atl. 1014.

90. **Navigable Waters**—Interstate Boundary.—How land that emerges on either side of interstate boundary stream shall be disposed of as between public and private ownership is to be determined according to the law of each state.—State of Arkansas v. State of Tennessee, U. S. S. C., 38 S. Ct. 301.

91. **Negligence**—Presumption of Death.—Where a customer went to a counter to purchase a jardiniere, the presumption obtained in action for his death by falling down an elevator shaft, in the absence of contrary evidence, that in going behind the counter he did so to continue his examination preparatory to purchasing.—S. H. Kress & Co. v. Markline, Miss., . So. 858.

92. **Principal and Agent**—Scope of Agency.—Under Civ. Code Ga. 1910, § 3582, declaring that, without consent of principal, agent employed to sell cannot be himself purchaser, sales agent is not authorized to sell in foreign market under arrangement by which he assumed possible loss and took profits, that amounting to sale to agent.—Atlantic Turpentine & Pine Tar Co. v. Mosin & Turpentine Export Co., U. S. D. C., 247 Fed. 618.

93.——Notice.—Where notes bearing notation as to surety's liability were returned by seller's branch office, with request that such notation be made on a separate paper, court held justified in finding that this was with knowledge and authority of seller.—Emerson-Brantingham Implement Co. v. Sylvester, Colo., 171 Pac. 88.

94. **Railroads**—Stoppage of Trains.—Under Vernon's Sayles' Ann. Civ. St. 1914, arts. 6557, 6672, railroad company ordered to stop trains and waiting for proceedings against it instead of instituting suit to test valadity of the order, held properly subjected to penalty for each failure to stop.—Gulf, C. & S. F. Ry. Co. v. State of Texas, U. S. S. C., 38 S. Ct. 236.

95. **Reformation of Instruments**—Accommodation Note.—A mortgage given as security for an accommodation "note to F. and B.," whereas the note was in favor of W. O., executed at the F. and B. bank, evidencing a loan made through the good officers of the bank, could be reformed in a foreclosure against the accommodated party.—Webster v. Rogers, Ore., 171 Pac. 197.

96. **Release**—Inadequate Consideration.—In action by city employe for injury while caring for fire horses, where paper relied on as release was signed when parties were mutually mistaken as to extent of injuries, and where sum named therein was manifestly inadequate, release was not binding.—Smith v. Kansas City, Kan., 171 Pac. 9.

97. **Sales**—Breach of Contract.—Where goods are bought under agreement to give notes for part of purchase price and buyer, after receiving the goods refuses to execute and deliver such notes, the seller, without awaiting the expiration of the credit, may maintain action for breach of the agreement.—Hodges v. Blythe, Okla., 171 Pac. 16.

98.——Fictitious Purchaser.—Where horse dealer, dealing directly with the buyer, sold horse and took notes and mortgage for price, buyer giving a fictitious name and residence, there was sale, voidable only between the seller and buyer or persons with notice of the fraud, but not as against innocent purchasers.—Martin v. Green, Me., 102 Atl. 977.

99. **Taxation**—Excise Taxes.—St. Mass. 1909, c. 490, pt. 3, § 56, imposing increased excise taxes on foreign corporations, but not upon domestic corporations, is not unconstitutional as applied to foreign corporation which had previously acquired land for automobile purposes, there being no proof that such land was not salable at reasonable price.—Cheney Bros. Co. v. Commonwealth of Massachusetts, U. S. S. C., 38 S. Ct. 295.

100. **Waters and Water Courses**—Public Service Company.—Corporation engaged in supplying municipality and its inhabitants with water, though having indefinite franchise, is entitled to fair return, and value of its property should be reckoned on its present value as used.—City and County of Denver v. Denver Union Water Co., U. S. S. C., 38 S. Ct. 278.